

REMARKS

These remarks are responsive to the Office Action dated November 7, 2003. Currently, claims 1-46 are pending with claims 1, 9, 17, 25, 33 and 41 being independent.

The Examiner rejected claims 1-4, 6-12, 14-20, 22-28, 30-36, and 38-40 under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,862,136, Irwin (hereinafter "Irwin") in view of US Patent No. 6,219,396 B1, Owada (hereinafter "Owada").

The Examiner rejected claims 41-46 under 35 U.S.C. 102(e) as being anticipated by Irwin.

The Examiner objected to claims 5, 13, 21, 29 and 37 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

These objections and rejections are respectfully traversed for at least the reasons set forth below.

35 U.S.C. 103(a)

The Examiner rejected claims 1-4, 6-12, 14-20, 22-28, 30-36, and 38-40 under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of Owada. These rejections are respectfully traversed.

The Irwin reference relied upon by the Examiner is disqualified as a prior art reference under 35 U.S.C. 103 (c). MPEP § 706.02(l). Section 103 (c) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The present invention and the Irwin patent were at the time the invention was made both subject to an obligation of assignment to Nortel Networks Corporation.

The present invention was assigned to Nortel Networks Corporation and was issued a United States Patent and Trademark Office Notice of Recordation of Assignment Document bearing the Recordation Date of 02/09/2000 with Reel/Frame No.: 010550/0337.

The Irwin patent was initially assigned to Northern Telecom Limited, which later changed it's name to Nortel Networks Limited. Subsequently, Nortel Networks Limited changed it's name again to Nortel Networks Corporation and was issued a United States Patent and Trademark Office Notice of Recordation of Assignment Document bearing the Recordation Date of 12/23/1999 with Reel/Frame No.: 010567/0001.

The Irwin patent and the present invention fall under the disqualification cited in 35 U.S.C. 103 (c) since at the time the invention was made, they were both subject to an assignment to Nortel Networks Corporation. The Examiner is respectfully requested to reconsider and withdraw his rejection of claims 1-4, 6-12, 14-20, 22-28, 30-36, and 38-40.

The Examiner objected to claims 5, 13, 21, 29 and 37 as being dependent upon a rejected base claim, but stated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 5, 13, 21, 29 and 37 depend from claims 1, 9, 17, 25 and 33 respectively. As such, claims 5, 13, 21, 29 and 37 fall under the disqualification of 35 U.S.C. 103 (c) for the same reasons stated above with respect to claims 1, 9, 17, 25 and 33. The objections to claims 5, 13, 21, 29 and 37 are respectfully traversed and the Examiner is requested to reconsider and withdraw his objections of claims 5, 13, 21, 29 and 37.

35 U.S.C. 102 (e)

The Examiner rejected claims 41-46 under 35 U.S.C. 102 (e) as being anticipated by Irwin. Claims 41-46 have been cancelled without prejudice.

Other Matter

The citation of U.S. Patent Nos.: 4,586,189; 5,392,280; 5,666,362; 6,047,002; 6,061,343; 6,178,138; 6,181,694; 6,487,198 and 6,526,059 is respectfully acknowledged. However, these patents are deemed to lack facts which would detract from the patentability of the claims.

No new matter has been added.

The claims currently presented are proper and definite. Allowance is accordingly in order and respectfully requested. However, should the Examiner deem that further clarification of the record is in order, we invite a telephone call to the Applicants' undersigned attorney to expedite further processing of the application to allowance.

Respectfully submitted,



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